Supreme Court, U.S.
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No. 03-375

In the Supreme Court of the United States

ILLINOIS,

Petitioner,

vs.

GREGORY BOWMAN,

Respondent.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, Fifth Judicial District

REPLY BRIEF

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Before proceeding, it is important to correct two misstatements in respondent's brief in opposition. First, contrary to respondent's suggestion (Opp. 1 n.1) his plea was in fact an *Alford* plea, as demonstrated by the words of his trial counsel:

> MR RICE: May it please the Court, what we are doing is predicated somewhat upon the Supreme Court decision in *North Carolina v. Alford*, which is 400 U.S. Number 25; wherein, the Court recognized - recognized the situation where an accused may wish to plead guilty and yet not admit the facts during the course of the plea taking, which is the situation here. And the Court had indicated a reluctance to accept the plea in that fashion.
>
> Mr. Bowman had indicated a willingness to plead but a non-willingness to conceed [sic] particular facts leading to that admission of guilty plea. And what we are doing is in lieu of that and letting the Court make a finding of guilty without the necessity of Mr. Bowman actually indicating the factual basis for that.
>
> And, in addition to what we are doing here, Mr. Bowman's position is that he, in effect, is pleading guilty, desires to plead guilty. Pet. App. 35a.

Second, no court, either trial or appellate, concluded that respondent's confession was a false one. The Illinois Appellate Court noted, "Defendant's corroborated admissions regarding the murder of Ruth Ann and the location of her body were made prior to the discovery of her body." Pet. App. 4a. Indeed, four months before Ruth Ann Jany's remains were found, respondent confessed that he had left the item used to strangle Jany around her neck. She was found with a knotted halter top around her neck.

REASONS FOR GRANTING THE PETITION

A. The Illinois Court's Decision Creates A Split of Authority Among State Courts.

Respondent skirts the question whether the Illinois Appellate Court's decision creates a split of authority. Instead, he asserts that petitioner is "essentially seeking an advisory opinion from this Court" because, in respondent's view, the question presented "does not fully reflect the holding of the Appellate Court of Illinois." (Opp. 4) In so asserting, respondent fails to recognize that a knowing and voluntary guilty plea waives all non-jurisdictional defects antecedent to the guilty plea.

Compounding the flaw in respondent's position is his persistent inability to recognize the distinction between the voluntariness of his plea and the voluntariness of his confession. Facts unknown to defendants at the time of their pleas of guilty are precisely what they are waiving by entering those pleas. Hence, the respondent's alleged refutation of petitioner's position that there is a split of authority does not refute at all. The cases to which the petitioner cites specifically involve decisions that pleas of guilty are not subject to collateral attack.

The Illinois Appellate Court recognized the preclusive effect guilty pleas have on collateral attacks premised on facts antecedent to the guilty plea. Pet. App. 12a-13a. This is precisely why the court endeavored, before addressing whether the respondent voluntarily confessed to the crime, to determine whether respondent's *Alford* plea was a "guilty" plea that foreclosed a challenge to a conviction, like those pleas examined in *Brady v. United States*, 397 U.S. 742 (1970), *McMann v. Richardson*, 397 U.S. 759 (1970), and *Parker v. North Carolina*, 397 U.S. 790 (1970).

Accordingly, a decision by this Court determining that an *Alford* plea carries the same effect as those pleas entered in

the *Brady* trilogy would not be an "advisory" opinion, but in fact would require reversal of the decision below. The Illinois Appellate Court's discussion of the *Brady* trilogy and its relationship to *Alford* pleas grounded its holding in favor of respondent. The Illinois court's mistaken holding, that convicted criminals have a due process right to collaterally attack a knowing and voluntary *Alford* plea, conflicts with the decisions of other states. See Pet. 6-7.

B. The Illinois Appellate Court Erroneously Carved A Distinction Between *Alford* Pleas and Other Guilty Pleas.

Respondent insists that the Illinois Appellate Court's decision is consistent with this Court's precedents. He asserts three bases upon which the Illinois court's decision can be reconciled with this Court's *Brady* trilogy. None are persuasive.

He first states that *Brady* and *Tollett* "essentially [held] that the solemn admission of guilt equates to the factual admission to the court by the defendant of 'I did it; I, in fact, committed the crime.'" Opp. 6. Respondent cites no language from either of these opinions in support of this contention. In fact, for the reasons stated in petitioner's argument, the "solemn admission of guilt" referenced in this Court's precedents refers to the *act* of pleading guilty itself, and not to a separate express agreement to the evidentiary facts recited in the factual basis for the plea. Pet. 7-13.

Respondent next notes that because "the State suppressed evidence that the State was required to disclose to him," respondent and his counsel were unable to adequately assess the State's evidence prior to the plea. Opp. 6. Relatedly, respondent asserts that the defendants in the *Brady* trilogy were precluded from collaterally attacking

their knowing and voluntary pleas on the basis of facts *known* to the defendants at the time of the plea. Opp. 6. Respondent again confuses the distinction between the voluntariness of his plea and the voluntariness of his confession. The fact that respondent was unaware of the alleged illegality of his confession is of no moment to the only relevant inquiry, that being whether respondent's act of pleading guilty is knowing and voluntary. In *McMann v. Richardson*, the Court held that while a defendant may often be motivated to plead guilty on the "prediction" that the State will be permitted to use his confession against him at trial, "nothing in the train of events suggests that the defendant's plea, as distinguished from his confession, is an involuntary act." *McMann*, 397 U.S. at 769. Accordingly, a defendant's assertion that his plea was coerced is "at most a claim that the admissibility of his confession was mistakenly assessed," (id. at 769), and hence "only when it develops that the defendant was not fairy apprised of [the plea's] consequences can his plea be challenged under the Due Process Clause." *Mabry v. Johnson*, 467 U.S. 504, 509 (1984).

Third, respondent contends that the "error in this case did not concern the grand jury process [as in *Tollett*] but concerned the evidence of guilt presented at the *Alford* plea hearing." Opp. 6. Respondent further maintains that his involuntary admission "render[ed] the State's evidence at the *Alford* plea unreliable as to the Respondent's guilt." Opp. 7. That the state trial court may have accepted a guilty plea that has, as its factual basis, an involuntary confession does not diminish the knowing and voluntary act of defendant's guilty plea and his understanding of the consequences of his action. The factual basis for the plea primarily serves as an administrative convenience for the court to ascertain that the defendant's plea is premised upon facts that would, if proven true, constitute the offense for which defendant is pleading guilty. The principles set

forth in the *Brady* trilogy were concerned not with the quantum and reliability of the facts that underscored the charges for which the respective defendants were pleading guilty, but rather the direct consequences of the defendant's personal act of pleading guilty.

In sum, petitioner reiterates that the decision of the Illinois Appellate Court is inconsistent with this Court's precedents.

C. If The Illinois Appellate Court's Decision Stands, All Defendants Pleading Guilty Will Enter *Alford* Pleas And There Will Be No Finality In Guilty Plea Convictions.

Respondent argues that the decision of the Illinois Appellate Court is limited to *Alford* pleas where the factual basis for the plea is primarily predicated on a confession later determined to be involuntary. However, the Illinois Appellate Court did not so limit its decision. The Court correctly noted that respondent's collateral attack on his plea would have been barred if the plea were of the same character as pleas in the *Brady* trilogy. Having found that *Alford* pleas may be collaterally attacked, the court *then* proceeded to consider whether the circuit court appropriately ordered a new trial for respondent. There can be no other conclusion but that any defendant who enters an *Alford* plea is entitled to collaterally attack his plea on the basis of facts antecedent to that plea. The far-reaching implications of this legal conclusion would be dramatic and contrary to the goal of obtaining a finality of judgment through the entry of a guilty plea.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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